IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 03.07.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE M. JEYAPAUL

CRIMINAL APPEAL NO.678 OF 2004

Krishnan ... Appellant

-Vs.-

State by
The Inspector of Police
Valparai Police Station
Coimbatore District. ... Respondent

Appeal under Section 372 (2) of Cr.P.C. against the judgment dated 28.04.2003 made in S.C.No.47 of 2003 on the file of the II Additional Sessions Judge, Coimbatore.

For Appellant : Mr.S.Govindarajan

For Respondent : Mr.P.Kumaresan
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by M.Jeyapaul, J.)

The accused who suffered a conviction in a case of murder moves this appeal.

2. The learned II Additional Sessions Judge, Coimbatore convicted the accused for offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a sum of Rs.500/-, in default to undergo 6 months Rigorous Imprisonment.

3. The charge against the appellant / accused is that on 11.05.2002 at about 8 p.m. at Lower paralai estate, labourer colony, Valparai, the accused having suspected the fidelity of his wife attacked her with knife all over her body and caused her instantaneous death and thereby committed an offence punishable under Section 302 IPC.

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4. The prosecution has examined as many as 10 witnesses and marked 20 documents and 14 material objects to establish their case.

5. The case in brief of the prosecution as reflected in the evidence adduced by the prosecution is as follows:

(i) The deceased Padmavathi is the wife of the accused Krishnan and mother of Sivaprasath, P.W.1. Raju, P.W.2 and Joseph, P.W.3 are their neighbours.

(ii) All of them were residing at Lower paralai estate, labourer colony, Valparai. Sivaprasath, P.W.1 was residing with his parents. The accused having suspected the fidelity of his wife, used to beat her often. Sivaprasath, P.W.1, Raju, P.W.2 and Joseph, P.W.3 have spoken about such a suspicion entertained by the accused against his wife. Even on 11.05.2002, about 10 days prior to the occurrence, the accused having suspected the fidelity of his wife, attempted to attack her with knife. It was only P.W.1, who is the son of the accused and the deceased appeased them.

(iii) On 11.05.2002 at about 8 p.m., there was a hue and cry at the house of the accused. Raju, P.W.2 and Joseph, P.W.3 were in their houses at that point of time. Having asked his wife to disclose the name of the person who had an affair with her and taken to heels from the house, the accused attacked his wife with knife. But when the deceased resisted, the accused sustained some injuries on his left hand. Thereafter, the accused resumed his attack on the deceased with knife. The deceased unable to bear the attack started running out of the house. The accused having caught held of the tuft of the deceased, attacked on her chest and caused instantaneous death. The accused sped away from the scene of occurrence along with the knife.

(iv) Having been informed of the occurrence, P.W.1, went to Valparai Police Station at about 10 p.m. on 11.05.2002 and submitted a report, Ex.P.1. The Sub-Inspector of Police, P.W.9, who received the report, registered a case in Cr.No.134 / 2002 under Section 302 IPC. He prepared the printed First Information Report Ex.P.12. and despatched the original to the learned Judicial Magistrate and the copies thereof to the higher officials concerned. He despatched the Original printed First Information Report through Grade I constable Narayanasamy. P.W.9 has spoken to the fact that the said Narayanasamy first went to the Judicial Magistrate Court, Valparai and thereafter to Judicial Magistrate Court, Palladam and then to Judicial Magistrate Court, Avinashi and thereafter to Judicial Magistrate Court, Mettupalayam and lastly to Judicial Magistrate Court, Tiruppur, as the Judicial Magistrate's at Valparai, Palladam, Avinashi and Mettupalayam had gone on leave. That was the reason why there was a delay in delivering the printed First Information Report to the learned Judicial Magistrate,

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Tiruppur. The printed First Information Report was delivered to him only at 7 p.m. on 12.05.2002.

(v) The Inspector of Police, P.W.10 took up the case for investigation, having received a copy of the First Information Report at about 00.15 hours on 12.05.2002. He rushed to the scene of occurrence and prepared observation mahazar, Ex.P.2 in the presence of Alexander John, P.W.4. He also drew rough sketch, Ex.P.14 reflecting the scene of occurrence. He recovered blood stained cement plaster (M.O.2), Sample cement plaster (M.O.3), Blood stained door mat (M.O.4) and Blood stained monthly calendar (M.O.5) under relevant seizure mahazar, Ex.P.3 only in the presence of the above witnesses. P.W.10 held inquest on the dead body of Padmavathi and prepared inquest report, Ex.P.15 in the presence of panchayatdars.

(vi) On the basis of the requisition Ex.P.7, given by the Inspector of Police, P.W.10, Dr.Munuswamy, P.W.8, commenced postmortem on the dead body of Padmavathi at 6.30 am on 12.05.2005. He found the following injuries and other symptoms on the dead body of Padmavathi:

> *" Appearance found at the postmortem*
> *A body of a female aged about 52 years lies on back with the following injuries :*
> *1) An incised wound in the left side of the forehead extends to the left temporal region 10 cm x 1 cm x (1 cm – variable depth)*
> *2) Incised wound in the left supra orbital region 3 cm x 1/2 cm x 1/2 cm*
> *3) A small lacerated wound in the bridge of the nose.*
> *4) Incised wound in the middle 1/3 of the posterior aspect of the right thigh.*
> *5) Incised wound in the left hand in the web space between thumb and index finger 2 cm x 1 cm x 1 cm.*
> *6) Incised wound in the right hand in the web space between thumb and index finger 2 cm x 1 cm x 1 cm.*
> *7) A punctured spindle shaped wound in the epigastric region 3 cm x 1 cm. When the wound is cleaned blood clots seen and it passed slightly upwards and laterally to the left side of body and it seems to be (torn..) them 6 cm in depth.*
> *On opening the abdomen and thoracic cavity, the following injuries were noted.*
> *1) A lacerated wound in the upper surface of the left lobe of the liver. 1 cm x 1/2 cm.*
> *2) Punctured wound in the diaphragm seen 1 cm x 1/2 cm.*

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3) Punctured wound in the pericardium 1/2 cm x 1/2 cm. Pericardium full of blood.
4) Punctured wound in the right ventricle seen abut 1/2 cm x 1/2 cm. Heart empty. Right ventricle contains blood clot. Abdominal cavity contains about 1000 ml of blood. Stomach wt. 30 gm. contains partially digested food particles. Hyoid bone intact. Kidneys wt. 300 gm. surface smooth. Lungs normal, surface smooth. Right wt. 500 gm, Left wt. 400 gm. Spleen wt. 200 gm, surface smooth. Uterus Atrophied and in small size. Skull - no fracture. Brain wt. 1200 gm, surface smooth. Vessels - normal."

(vii) He has opined in his postmortem certificate, Ex.P.8 that the deceased died of shock and Hemorrhage due to injury to heart and the liver about 12 to 18 hours prior to autopsy.

(viii) The Blood stained apparels found on the dead body were recovered by the postmortem constable and entrusted to the Inspector of Police, P.W.10 for further investigation in the matter.

(ix) On 13.05.2002, at about 6 a.m. near grave yard at paralai estate, P.W.10. arrested the accused in the presence of Kannan, P.W.5. On the basis of the admissible portion, Ex.P.4, in the confession statement given by the accised, the blood stained knife (M.O.1) was recovered near a thorny bush at paralai graveyard. The blood stained polyester lungi (M.O.6) and blood stained shirt (M.O.7) were seized from the accused under seizure mahazar Ex.P.6.

(x) As the accused was found with an injury on his left hand, he was sent to Dr.Munuswamy, P.W.8, along with police memo for treatment. The accused informed Doctor that he sustained injury when he attacked his wife at about 7.30 p.m. on 11.05.2002. P.W.8, found a small incised wound in the base of the left middle finger measuring 1 cm x 1/4 cm. He has opined in the copy of the accident register, Ex.P.10 issued by him that the injury sustained by the accused was simple in nature. The accused and the material objects were remanded to judicial custody.

(xi) P.W.10 submitted a request, Ex.P.17 to the learned Judicial Magistrate, Valparai for the purpose of sending the material objects for chemical examination. Based on the request, Ex.P.18 made by the learned Judicial Magistrate, Valparai, the material objects were analysed and chemical report (Ex.P.19) and serology report (Ex.P.20) were received by the learned Judicial Magistrate, Valparai.

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(xii) Having completed the investigation in this case, P.W.10, laid Final Report under Sections 302 IPC as against the accused.

6. When the accused was questioned under Section 313 Cr.P.C., relating to the incriminating circumstances, spoken to by the witnesses examined by the side of the prosecution, he has submitted that he attacked his wife and caused her death, as he found his wife and Joseph, P.W.3 in a compromising position.

7. The trial Judge having relied upon the testimony of the eye witnesses, Raju, P.W.2 and Joseph, P.W.3 in the background of the arrest and seizure made by the investigating officer has returned the verdict of conviction as against the accused.

8. The learned counsel for the Accused would contend that the sustained provocation provided by the deceased made the Accused to lose his self control.

9. The learned Additional Public Prosecutor would submit that the verdict returned by the trial Judge based on the ocular testimony does not warrant interference. It is his submission that neither P.W.2., nor P.W.3 has spoken to anything which could have provoked the accused to attack his wife at the time of occurrence.

10. Raju, P.W.2 and Joseph, P.W.3, the ocular witnesses in this case have spoken to the fact that the accused attacked his wife after questioning her as to who had an affair with her in his absence. Of course, they have categorically deposed before the Court, it was only the accused who attacked her not only inside the house, but also in front of the house when the deceased attempted to flee from the clutches of the accused and caused her death. They have deposed that the accused entertained a suspicion with regard to the fidelity of his wife.

11. P.W.1, is none other than the son of the deceased. He has also stated before the Court that his father having suspected the fidelity of his mother, used to pick up quarrel often. About 10 days prior to the occurrence, i.e., on 11.05.2002, the accused made an attempt to attack the deceased with knife on account of the said suspicion. The above testimony of the prosecution witnesses would show that the accused had committed this offence on account of the suspicion he entertained in his mind about the fidelity of his wife. Even when the accused was questioned under Section 313 Cr.P.C., he has come out with a version that he was sufficiently provoked as he had witnessed his wife in a compromising position with Joseph, P.W.3. and thereafter attacked his wife and caused her death. P.W.3 would deny such an allegation made by the accused. But we cannot forget the fact that the prosecution itself has come out with a case that the whole occurrence has taken place on account of the suspicion entertained by the accused as against the deceased.

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12. Referring to the confession statement of the accused recorded by the Inspector of Police, P.W.10 for the limited purpose of finding where the offence falls within the scope of any of the exceptions under Section 300 IPC, we find that the accused has come out with a version that he attacked his wife due to the sudden provocation, as he found his wife with compromising position with Joseph, P.W.3.

13. As already pointed out by us, Joseph has stoutly denied such allegation. But the fact remains that the accused having enquired as to who had affair with her in his absence, started attacking his wife and caused her death. Though there is lack of clear cut evidence for the sudden provocation as alleged by the accused, we find from the testimony of prosecution witnesses that the accused who sustained the provocation provided by the conduct of the deceased had attacked his wife and caused her death.

14. In the above circumstances, there is no difficulty to hold that it is only the accused who caused the death of his wife. But we find that the Culpable Homicide committed by the accused falls squarely under exception I provided under Section 300 IPC, as the accused had committed the offence deprived of his power of control on account of the provocation flowed from the very conduct of the deceased.

15. In the result, we set aside the judgment of conviction and sentence passed by the II Additional Sessions Judge, Coimbatore for offence under Section 302 IPC. Instead, we find the accused guilty of the offence under Section 304 (i) IPC and sentence him to undergo 7 years Rigorous Imprisonment. The period already undergone by the accused in connection with this case shall be set off. The appeal is accordingly disposed of.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The II Additional Sessions Judge
   Coimbatore.

2. -do- Through The Principal Sessions Judge
   Coimbatore

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3. The Superintendent
   Central Prison,
   Coimbatore.

4. The District Collector
   Coimbatore.

5. The Director General of Police
   Chennai.

6. The Public Prosecutor,
   High Court, Madras.

7. The Inspector of Police
   Valparai Police Station
   Coimbatore District.

1 cc to Mr.S.Govindarajan, Advocate, SR.28068

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CRIMINAL APPEAL NO. 678 OF 2004

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